



City Council Chambers  
3300 Capitol Avenue  
Fremont, California

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### City Council

Bob Wasserman, Mayor  
Bob Wieckowski, Vice Mayor  
Anu Natarajan  
Bill Harrison  
Suzanne Lee Chan

### City Staff

Fred Diaz, City Manager  
Harvey E. Levine, City Attorney  
Melissa Stevenson Dile, Deputy City Manager  
  
Dawn G. Abrahamson, City Clerk  
Harriet Commons, Finance Director  
Marilyn Crane, Information Technology Svcs. Dir.  
Mary Kaye Fisher, Interim Human Resources Dir.  
Annabell Holland, Parks & Recreation Dir.  
Norm Hughes, City Engineer  
Jill Keimach, Community Dev. Director  
Bruce Martin, Fire Chief  
Jim Pierson, Transportation & Ops Director  
Jeff Schwob, Planning Director  
Suzanne Shenfil, Human Services Director  
Craig Steckler, Chief of Police  
Lori Taylor, Economic Development Director  
Elisa Tierney, Redevelopment Director

## City Council Agenda and Report [Redevelopment Agency of Fremont]

### General Order of Business

1. Preliminary
  - Call to Order
  - Salute to the Flag
  - Roll Call
2. Consent Calendar
3. Ceremonial Items
4. Public Communications
5. Scheduled Items
  - Public Hearings
  - Appeals
  - Reports from Commissions, Boards and Committees
6. Report from City Attorney
7. Other Business
8. Council Communications
9. Adjournment

### Order of Discussion

Generally, the order of discussion after introduction of an item by the Mayor will include comments and information by staff followed by City Council questions and inquiries. The applicant, or their authorized representative, or interested citizens, may then speak on the item; each speaker may only speak once to each item. At the close of public discussion, the item will be considered by the City Council and action taken. Items on the agenda may be moved from the order listed.

### Consent Calendar

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address the City Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.



## **Addressing the Council**

Any person may speak once on any item under discussion by the City Council after receiving recognition by the Mayor. Speaker cards will be available prior to and during the meeting. To address City Council, a card must be submitted to the City Clerk indicating name, address and the number of the item upon which a person wishes to speak. When addressing the City Council, please walk to the lectern located in front of the City Council. State your name. In order to ensure all persons have the opportunity to speak, a time limit will be set by the Mayor for each speaker (see instructions on speaker card). In the interest of time, each speaker may only speak once on each individual agenda item; please limit your comments to new material; do not repeat what a prior speaker has said.

## **Oral Communications**

Any person desiring to speak on a matter which is not scheduled on this agenda may do so under the Oral Communications section of Public Communications. Please submit your speaker card to the City Clerk prior to the commencement of Oral Communications. **Only those who have submitted cards prior to the beginning of Oral Communications will be permitted to speak.** Please be aware the California Government Code prohibits the City Council from taking any immediate action on an item which does not appear on the agenda, unless the item meets stringent statutory requirements. The Mayor will limit the length of your presentation (see instructions on speaker card) and each speaker may only speak once on each agenda item.

**To leave a voice message for all Councilmembers and the Mayor simultaneously, dial 284-4080.**

**The City Council Agendas may be accessed by computer at the following Worldwide Web Address: [www.fremont.gov](http://www.fremont.gov)**

## **Information**

Copies of the Agenda and Report are available in the lobbies of the Fremont City Hall, 3300 Capitol Avenue and the Development Services Center, 39550 Liberty Street, on Friday preceding a regularly scheduled City Council meeting. Supplemental documents relating to specific agenda items are available at the Office of the City Clerk.

The regular meetings of the Fremont City Council are broadcast on Cable Television Channel 27 and can be seen via webcast on our website ([www.Fremont.gov](http://www.Fremont.gov)).

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting the City Clerk at (510) 284-4060. Council meetings are *open captioned* for the deaf in the Council Chambers and *closed captioned* for home viewing.

## **Availability of Public Records**

All disclosable public records relating to an open session item on this agenda that are distributed by the City to all or a majority of the City Council less than 72 hours prior to the meeting will be available for public inspection in specifically labeled binders located in the lobby of Fremont City Hall, 3300 Capitol Avenue during normal business hours, at the time the records are distributed to the City Council.

Information about the City or items scheduled on the Agenda and Report may be referred to:

Address: City Clerk  
City of Fremont  
3300 Capitol Avenue, Bldg. A  
Fremont, California 94538  
Telephone: (510) 284-4060

*Your interest in the conduct of your City's business is appreciated.*

**AGENDA**  
**FREMONT CITY COUNCIL REGULAR MEETING**  
**MAY 11, 2010**  
**COUNCIL CHAMBERS, 3300 CAPITOL AVE., BUILDING A**  
**7:00 P.M.**

**1. PRELIMINARY**

- 1.1 Call to Order
- 1.2 Salute the Flag: Led by Boy Scout Troop #111
- 1.3 Roll Call
- 1.4 Announcements by Mayor / City Manager

**2. CONSENT CALENDAR**

*Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which event the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.*

- 2.1 *Motion to Waive Further Reading of Proposed Ordinances  
(This permits reading the title only in lieu of reciting the entire text.)*
- 2.2 *Approval of Minutes – None.*
- 2.3 *FY 2010/11 PARATRANSIT WORKPLAN  
Adopt a Resolution Authorizing Submittal of a Workplan for the FY 2010/11 Measure B Paratransit Program to the Alameda County Transportation Improvement Authority (ACTIA)*

*Contact Person:*

<i>Name:</i>	<i>Shawn Fong</i>	<i>Suzanne Shenfil</i>
<i>Title:</i>	<i>Paratransit Program Manager</i>	<i>Director</i>
<i>Dept.:</i>	<i>Human Services</i>	<i>Human Services</i>
<i>Phone:</i>	<i>510-574-2033</i>	<i>510-574-2051</i>
<i>E-Mail:</i>	<i>sfong@fremont.gov</i>	<i>sshenfil@fremont.gov</i>

*RECOMMENDATION: Adopt a resolution:*

- 1. *Authorizing submittal of the City's application to ACTIA for paratransit funding under Measure B.*

2. *Authorizing the City Manager or his designee to notify ACTIA that the City is allocating all Measure B paratransit revenues to the City's non-mandated paratransit program.*

**2.4 ADOPTION OF A RESOLUTION AUTHORIZING AN APPLICATION FOR FUNDING FROM THE USED OIL PAYMENT PROGRAM**

*Adoption of a Resolution Authorizing an Application From the City Manager or His Designee to Apply for Funding and Execute Necessary Documents to Implement and Expend Funds from the Used Oil Payment Program*

**Contact Person:**

<i>Name:</i>	<i>Chanel Kincaid</i>	<i>Kathy Cote</i>
<i>Title:</i>	<i>Environmental Specialist I</i>	<i>Environmental Services Manager</i>
<i>Dept.:</i>	<i>Environmental Services</i>	<i>Environmental Services</i>
<i>Phone:</i>	<i>510-494-4574</i>	<i>510-494-4583</i>
<i>E-Mail:</i>	<i>ckincaid@fremont.gov</i>	<i>kcote@fremont.gov</i>

**RECOMMENDATION:** *Adopt a resolution authorizing the City Manager or his designee to accept and expend funds from the Used Oil Payment Program, and to execute all grant documents, and appropriate any grant funds received to the Integrated Waste Management Grants Fund.*

**2.5 ACCEPT THE BRIDGE PREVENTATIVE MAINTENANCE PROGRAM GRANT AND APPROPRIATE FUNDS TO THE CITYWIDE BRIDGE REPAIR PROJECT**  
*Accept the Bridge Preventative Maintenance Program (BPMP) Grant and Appropriate the Grant Funds of \$322,862 to the Citywide Bridge Repair Project at the Isherwood, Old Canyon, Auto Mall, and Alvarado Bridges; City Project No. 8120B (PWC)*

**Contact Person:**

<i>Name:</i>	<i>Edward Nakayama</i>	<i>Norm Hughes</i>
<i>Title:</i>	<i>Engineer II</i>	<i>City Engineer</i>
<i>Dept.:</i>	<i>Community Development</i>	<i>Community Development</i>
<i>Phone:</i>	<i>510-494-4775</i>	<i>510-494-4748</i>
<i>E-Mail:</i>	<i>enakayama@fremont.gov</i>	<i>nhughes@fremont.gov</i>

**RECOMMENDATION:**

1. *Authorize the City Manager or designee to accept the BPMP grant and to execute any associated grant documents.*
2. *Appropriate funds in the grant amount of \$322,862 to 522PWC8120 (Citywide Bridge Repair).*
3. *Direct staff to begin design of the Citywide Bridge Repair Project.*

**2.6 APPROVAL TO INCREASE PURCHASE ORDER WITH ADAMSON POLICE PRODUCTS TO \$230,000**

*Request for Council Approval to Increase the Purchase Order with Adamson Police Products, a Division of Professional Police Supply, to \$230,000 in Fiscal Year 2009/10*

*Contact Person:*

<i>Name:</i>	<i>Susan Aro</i>	<i>Craig T. Steckler</i>
<i>Title:</i>	<i>Business Manager</i>	<i>Chief of Police</i>
<i>Dept.:</i>	<i>Police</i>	<i>Police</i>
<i>Phone:</i>	<i>510-790-6991</i>	<i>510-790-6810</i>
<i>E-Mail:</i>	<i>saro@fremont.gov</i>	<i>csteckler@fremont.gov</i>

*RECOMMENDATION: Authorize purchase of merchandise from Adamson Police Products in an amount not to exceed \$230,000 in FY 2009/10, to be funded by the Police Department operating budget.*

**2.7 APPROVAL OF PLANS AND SPECIFICATIONS, FUND APPROPRIATIONS, AND AWARD OF CONSTRUCTION CONTRACT TO SEISMIC RETROFIT AND RENOVATE FREMONT FIRE STATION NO. 3**

*Approval of Plans and Specifications, Fund Appropriations, and Award of Construction Contract to Seismic Retrofit and Renovate Fremont Fire Station No. 3 (City Project No. 8552B PWC) located in the Irvington District*

*Contact Person:*

<i>Name:</i>	<i>Martha S. Martinez</i>	<i>Rob Kalkbrenner</i>
<i>Title:</i>	<i>Project Manager</i>	<i>Civic Facilities Development Manager</i>
<i>Dept.:</i>	<i>Community Development</i>	<i>Community Development</i>
<i>Phone:</i>	<i>510-494-4727</i>	<i>510-494-4428</i>
<i>E-Mail:</i>	<i>mamartinez@ci.fremont.ca.us</i>	<i>rkalkbrenner@fremont.gov</i>

*RECOMMENDATION:*

- 1. Find that this project is categorically exempt from CEQA per section 15301, existing facilities.*
- 2. Approve Plans and Specifications for the new Fire Station No. 3,*
- 3. Appropriate \$2,440,641.81 in Fire Bond proceeds from Fund 213 to PWC8552, and*
- 4. Award a contract for the reconstruction of the new Fire Station No. 3 (City Project No. 8552B PWC) to River View Construction, Inc., in the amount of \$1,833,500.00; and authorize the City Manager, or designee, to execute the contract.*

**3. CEREMONIAL ITEMS – None.**

**4. PUBLIC COMMUNICATIONS**

**4.1 Oral and Written Communications**

REDEVELOPMENT AGENCY – The Redevelopment Agency Board will convene at this time and take action on the agenda items listed on the Redevelopment Agency Agenda. [See separate agenda](#) (yellow paper).

PUBLIC FINANCING AUTHORITY – None.

CONSIDERATION OF ITEMS REMOVED FROM CONSENT CALENDAR

**5. SCHEDULED ITEMS** – None.

**6. REPORT FROM CITY ATTORNEY**

6.1 Report Out from Closed Session of Any Final Action

**7. OTHER BUSINESS**

7.1 INTRODUCTION OF AN ORDINANCE PROHIBITING THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD PACKAGING

Consideration to Waive Full Reading and Introduce an Ordinance to Amend the Fremont Municipal Code (FMC) to add Title IV, Chapter 2, Article 10 to the FMC to Prohibit the Use of Expanded Polystyrene Disposable Food Service Ware by Food Vendors within City Limits

Contact Person:

Name:	Ken Pianin	Kathy Cote
Title:	Solid Waste Manager	Environmental Services Manager
Dept.:	Environmental Services	Environmental Services
Phone:	510-494-4582	510-494-4583
E-Mail:	kpianin@fremont.gov	kcote@fremont.gov

RECOMMENDATION:

1. Hold public hearing.
2. Find that the project is covered by a Negative Declaration under the California Environmental Review Act (CEQA) in that it does not have the potential to have a significant effect on the environment.
3. Waive full reading and introduce ordinance of the City of Fremont Amending the Fremont Municipal Code by Adding a New Article 10, Title 10, Title IV, Chapter 2 (Solid Waste, Recyclables, and Yard Waste Management) to Prohibit

the Use of Expanded Polystyrene (foam) Disposable Food Service Ware and to Require the Use of Recyclable or Compostable Food Service Ware Within City Limits by the City Council of the City of Fremont.

4. Direct staff to prepare and the City Clerk to publish a summary of the ordinance.

## **8. COUNCIL COMMUNICATIONS**

### **8.1 Council Referrals**

- 8.1.1 MAYOR WASSERMAN REFERRAL: Appointments to the East-West Connector Mitigation Monitoring Committee (MMC)

### **8.2 Oral Reports on Meetings and Events**

## **9. ADJOURNMENT**







## **\*2.3 FY 2010/11 PARATRANSIT WORKPLAN**

### **Adopt a Resolution Authorizing Submittal of a Workplan for the FY 2010/11 Measure B Paratransit Program to the Alameda County Transportation Improvement Authority (ACTIA)**

#### **Contact Person:**

Name:	Shawn Fong	Suzanne Shenfil
Title:	Paratransit Program Manager	Director
Dept.:	Human Services	Human Services
Phone:	510-574-2033	510-574-2051
E-Mail:	sfong@fremont.gov	sshensif@fremont.gov

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**Executive Summary:** The Alameda County Transportation Improvement Authority (ACTIA) administers the yearly allocation of Measure B sales tax revenues that are designated for paratransit programs. This funding, approved by Alameda County voters as part of the reauthorization of Measure B in November 2000, provides \$564,657 for the City's paratransit services in FY 2010/11. Additionally, ACTIA has set aside Measure B sales tax revenues as "stabilization" funding to help cities mitigate service cuts that resulted from significant paratransit revenue shortfalls in FY2009/10. The City of Fremont has set-aside stabilization funding of \$62,739.

In order for the City to access its yearly allocation of Measure B funds, staff was required to forward the City's annual program submittal for funding by March 31, 2010. A Council resolution formally authorizing submittal of the application is also required before fund disbursement by ACTIA. This report briefly describes the paratransit services proposed, and includes a recommendation that the City Council adopt a resolution authorizing formal submittal of the application.

Under Alameda County Measure B, South County cities must annually determine how to allocate their Measure B funding between local paratransit services, and services mandated under the Americans with Disabilities Act (ADA) and provided by the regional paratransit provider, East Bay Paratransit (a consortium of AC Transit and BART). This report also recommends that the City Council dedicate all Fremont Measure B paratransit revenues to fund the City-operated Paratransit Program.

A copy of the ACTIA annual program submittal for Measure B funding, which contains a detailed project budget, additional information regarding the program and the stabilization funding request, is enclosed.

**BACKGROUND:** For many years, the City of Fremont has provided essential paratransit services for its residents. These services enable seniors and people with disabilities to obtain medical care, shop for groceries, run errands and stay connected with family, friends and community activities. As a result of the reauthorization of Measure B, the countywide transportation sales tax, Fremont's allocation for City-based paratransit services increased from \$195,000 in FY 2001/02 to over \$700,000 in subsequent years. ACTIA estimates the City will receive \$564,657 for City-based paratransit services in FY 2010/11, and is eligible for an additional \$62,739 in stabilization funding. These funds will be provided through the City's existing agreement with ACTIA. In addition, the City will have about \$66,000 in "carry-forward" funds from FY 2009/10 that are designated in FY 2010/11 for an operational reserve fund.

The increase in Measure B funding over the last several years has enabled the City to be innovative in meeting the transportation needs of its growing senior and disabled population. Due to the increased need for reliable and efficient transportation, the quality of local paratransit service and the extensive outreach and education conducted by staff, program enrollment has grown from approximately 700 to 1,500 participants over the past eight years. Even though FY2009/10 program parameters were revised and services were scaled back to be more aligned with the recent changes in the economic landscape, the additional unanticipated reductions in Measure B revenues drastically reduced the amount of paratransit services the City was able to provide its residents during the fiscal year. The City's FY2010/11 paratransit workplan and annual program submittal to ACTIA reflect a restoration of services to the original levels proposed for FY2009/10. This restoration of services is in line with the priorities set by ACTIA's Paratransit Advisory and Planning Committee and its Board, and follows ACTIA's guidelines to mitigate service cuts that were a result of Measure B revenue reductions.

**DISCUSSION/ANALYSIS:** The proposed Paratransit Program for FY 2010/11 is based on consumer feedback from the Paratransit Advisory Committee, the Senior Citizens Commission and the yearly paratransit rider survey. It has three main service components:

- Door-to-Door Transportation for Individuals
- Group Trips
- In-Home Meal Delivery

Service components are described below:

**1. Door-to-Door Transportation for Individuals.** The City's door-to-door transportation service is available to Fremont residents of all ages who are disabled and unable to use public transit, and seniors who are over 80 years of age. Participants pay a fare of \$3.00 for each one-way trip within the local service area (Fremont, Newark and Union City). Based on demand patterns, service hours will be from 8 a.m. to 6 p.m. on weekdays, and from 9 a.m. to 3 p.m. on weekends. Eligible program participants will receive sixteen (16) one-way trip vouchers per month. The City will maintain the flexibility to increase or decrease the number of trip vouchers distributed during the course of the year based on service demand, program capacity and operating costs. For FY 2010/11, the City will provide approximately 15,000 door-to-door rides using either sedans or lift-equipped vans.

**2. Group Trips.** Based on consumer input, the City will continue its popular group trip service. The group trip component provides outings for seniors and persons with disabilities, many of whom are isolated due to disabling health condition(s), language barriers or major life crises (e.g., death of a spouse). The City provides several social and recreational group trips per week; individuals participate in the group trip program either through City-facilitated outings or through outings facilitated by community organizations serving older adults and persons with disabilities. Program participants pay \$2 each way for group trip transportation. The program will provide approximately 6,000 group trip rides in FY 2010/11.

**3. In-Home Meal Delivery.** For FY 2010/11, staff is proposing to continue to use Measure B funds to pay for meal delivery services through LIFE ElderCare's Meals on Wheels Program. A majority of Meals on Wheels participants are low-income, homebound, and at-risk of

institutionalization. The City's funding for the Meals on Wheels Program provides nutritionally balanced meals for program participants, and thus eliminates trips that may otherwise be needed for shopping or meals. ACTIA has determined that meal delivery is an allowable use of Measure B funds, and other cities, including Hayward and Newark, also use the funds for this purpose. The City will contract with LIFE ElderCare to provide a total of 54,000 meals to seniors and individuals with disabilities residing in Fremont.

**Public Input Process:** Staff has established a local Paratransit Advisory Committee (PAC) to provide feedback on the operations of the City's Paratransit Program and to help identify unmet paratransit needs in the Fremont community. The PAC is comprised of paratransit consumers, representatives of social service agencies that work with seniors and individuals with disabilities, and members of the City's Senior Citizens Commission. Members of the PAC have endorsed the workplan and service parameters for FY 2010/11, as has the Fremont Senior Citizens Commission.

**Available Funds:** Measure B provides a specific allocation for paratransit services in each region of the County, including the Tri-Cities. According to ACTIA's current sales tax projections, the City's expected share for paratransit services in FY 2010/11 will be \$564,657, with an additional \$62,739 in stabilization funding. In addition, the City will have approximately \$66,000 in "carry-forward" operating reserve funds. In FY 2010/11, staff anticipates utilizing a significant portion of the reserve and stabilization funds to provide the critically needed services described above. Staff estimates that, at the end of FY 2010/11, reserve funds will equal about \$31,000. This amount is consistent with ACTIA's policy regarding allowable operating reserves.

**Projected Expenditures:** The Paratransit Program budget contains line items for the following functions: trip provision, meal delivery, customer service and outreach, and management activities.

1. **Trip Provision Activities (contracted and non-contracted):** The City currently contracts with MV Transportation, Inc., to provide door-to-door transportation for individuals and group trip services. The total compensation amount for the paratransit services contract for FY 2010/11 will be \$385,000. City-provided trip provision activities are also included in the program and budget, as allowed by ACTIA. City-provided trip provision activities include staff coordination of group trips, vehicle inspections, voucher distribution, and processing of prepaid voucher fares.
2. **Meal Delivery Activities:** The City will leverage Measure B funds (\$47,500) and social service grant funds (\$38,727) to support the Meals on Wheels Program in FY2010/11.
3. **Customer Service and Outreach:** Customer service and outreach activities include eligibility determinations, consulting assistance to riders, and outreach to potential riders, caregivers and service providers.
4. **Management Activities:** Management activities include program oversight, planning, budgeting, fiscal management, contract management, maintenance and compilation of program statistics, overhead, and participation in regional meetings.

**Budget:** The proposed FY 2010/11 program budget is outlined below.

<u>Available Funds</u>	<u>Trip Services</u>	<u>Meal Delivery</u>	<u>Total</u>
Measure B Pass-Thru Funds	\$517,157	\$47,500	\$564,657
Measure B Stabilization Funds	\$62,739	--	\$62,739
Fares (retained by City)	\$24,000	--	\$24,000
Fares (retained by Vendor)	\$25,000	--	\$25,000
Reserve Funds - operations	\$66,053	--	\$66,053
Social Service Grant - Meal Delivery Funding	--	\$38,727	\$38,727
<b>Total Funds Available</b>	<b>\$694,949</b>	<b>\$86,227</b>	<b>\$781,176</b>
<u>Expenditures (by function)</u>			<u>Total</u>
Trip Provision			\$444,906
Meal Delivery			\$86,227
Customer Service/Outreach			\$138,946
Management			\$79,667
<b>Total Expenditures</b>			<b>\$749,746</b>
<b>Reserve Funds</b> (estimated at the end of FY 2010/11)			<b>\$31,430</b>

More detailed budget information is included in the attached application.

**Allocation of Measure B Funds:** Under Alameda County Measure B, South County cities, including Fremont, must make an annual determination of how to allocate funds between local city-operated programs (“non-mandated services”) and East Bay Paratransit (“ADA-mandated services”). In the past, the Council has allocated all funds to the non-mandated, city-operated service. Staff believes that the Council should continue this policy for the following reasons:

- East Bay Paratransit is required to provide paratransit services in Fremont under the ADA, and is required to fund these services out of its own budget. Any Measure B contribution provided by the City would simply offset costs incurred by East Bay Paratransit, not provide any additional services to local residents.
- The City-operated program provides a higher level of customer service and outreach than the regional ADA-mandated service, which staff believes is necessary for a successful service.
- The non-mandated service has now grown to the point that if any funds were allocated for ADA-mandated services, the city-operated paratransit service would have to be significantly reduced.

**FISCAL IMPACT:** There is no fiscal impact on the City’s General Fund because paratransit program operations are entirely funded through the Measure B half-cent sales tax. Appropriation of these funds will be included in Council’s consideration of the FY 2010/11 operating budget.

**ENCLOSURES:**

- [Exhibit A: Draft Resolution](#)
- [Exhibit B: Alameda County Transportation Improvement Authority, Special Transportation for Seniors and People with Disabilities, Annual Program Submittal for Measure B Funding, Fiscal Year 2010/11](#)

**RECOMMENDATION:** Adopt a resolution:

1. Authorizing submittal of the City's application to ACTIA for paratransit funding under Measure B.
2. Authorizing the City Manager or his designee to notify ACTIA that the City is allocating all Measure B paratransit revenues to the City's non-mandated paratransit program.

**\*2.4 ADOPTION OF A RESOLUTION AUTHORIZING AN APPLICATION FOR FUNDING FROM THE USED OIL PAYMENT PROGRAM**

**Adoption of a Resolution Authorizing an Application From the City Manager or His Designee to Apply for Funding and Execute Necessary Documents to Implement and Expend Funds from the Used Oil Payment Program**

**Contact Person:**

Name:	Chanel Kincaid	Kathy Cote
Title:	Environmental Specialist I	Environmental Services Manager
Dept.:	Environmental Services	Environmental Services
Phone:	510-494-4574	510-494-4583
E-Mail:	ckincaid@fremont.gov	kcote@fremont.gov

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**Executive Summary:** The purpose of this report is to request the City Council to adopt a resolution to apply for, and execute necessary documents to implement and expend funds from, the Used Oil Payment Program from the Department of Resources Recycling and Recovery (CalRecycle). CalRecycle, formerly known as the California Integrated Waste Management Board (CIWMB), provides a non-competitive annual used oil block grant for used motor oil and oil filter collection programs. In October 2009, Senate Bill 546, also referred to as the California Oil Recycling Enhancement Act, was signed by the Governor. Senate Bill 546 abolished the annual used oil block grant and instead created the Used Oil Payment Program. Therefore, a new resolution is required to implement and expend funds from the Used Oil Payment Program.

**BACKGROUND/DISCUSSION:** For the past several years, the City has received a non-competitive used oil block grant from the CIWMB. The funds were used to inform residents about the proper disposal of used motor oil and oil filters through the distribution of printed materials, participation in regional media outreach efforts, and implementation of a residential collection program for used motor oil and oil filters by purchasing containers and partially subsidizing curbside collection service. The funding, based on population, has been approximately \$55,000 per year. The Used Oil Payment Program will supersede and essentially mirror the used oil block grant that is being discontinued. The new Payment Program will continue to be a formula grant based on population and will be used for proper motor oil and filter disposal outreach, and implementation of the residential used motor oil and oil filter curbside program. The differences between the former grant and new Payment Program lie in the method of payment. The previous used oil block grant was a reimbursement program, whereby the City completed a payment request form and expenditure summary and submitted them to CalRecycle. The City received reimbursement provided that the grant terms and conditions were met. In contrast, the Used Oil Payment Program is a payment system. The City will receive funds in advance and will be required to expend funds during the time allocated by CalRecycle. The activities the City will conduct with the Used Oil Payment Program money will remain unchanged.

The requirements of the Used Oil Payment Program require the City Council to adopt a resolution to apply for and execute the necessary documents to implement and expend funds. Staff anticipates the City will receive approximately \$55,000 from this year's Payment Program grant. Any grant funds received will be deposited in the Integrated Waste Management Grants account, 115.4411.

**FISCAL IMPACT:** Money received through the Used Oil Payment Program will fund expenses that would have been funded by the Environmental Services Division budget. There will be no General Fund impact as a result of this program.

**ENVIRONMENTAL REVIEW:** Not applicable.

**ENCLOSURE:** [Draft Resolution](#)

**RECOMMENDATION:** Adopt a resolution authorizing the City Manager or his designee to accept and expend funds from the Used Oil Payment Program, and to execute all grant documents, and appropriate any grant funds received to the Integrated Waste Management Grants Fund.

**\*2.5 ACCEPT THE BRIDGE PREVENTATIVE MAINTENANCE PROGRAM GRANT AND APPROPRIATE FUNDS TO THE CITYWIDE BRIDGE REPAIR PROJECT**  
**Accept the Bridge Preventative Maintenance Program (BPMP) Grant and Appropriate the Grant Funds of \$322,862 to the Citywide Bridge Repair Project at the Isherwood, Old Canyon, Auto Mall, and Alvarado Bridges; City Project No. 8120B (PWC)**

**Contact Person:**

Name:	Edward Nakayama	Norm Hughes
Title:	Engineer II	City Engineer
Dept.:	Community Development	Community Development
Phone:	510-494-4775	510-494-4748
E-Mail:	enakayama@fremont.gov	nhughes@fremont.gov

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**Executive Summary:** The Caltrans Division of Local Assistance invited local agencies to submit applications for the Bridge Preventative Maintenance Program (BPMP) funds in April 2006. Staff responded by submitting 10 applications to perform preventative maintenance repairs to 10 bridges. The project's goal is to extend the life of each bridge by performing preventative maintenance work. The City was successful in securing the grant for all 10 applications. Staff recommends dividing the proposed project into three phases with the first phase of work at the following locations: Alvarado Bridge, Auto Mall Bridge, Isherwood Bridge and Old Canyon Bridge. In order to initiate this project, staff recommends that the City Council authorize the City Manager or designee to accept the BPMP grant funds in the amount of \$322,862 for the first phase, execute any associated documents, and authorize staff to begin design on the Citywide Bridge Repair Project (PWC8120B).

**BACKGROUND:** On April 18, 2006, Caltrans notified local agencies of the new Local Assistance Bridge Preventive Maintenance Program (BPMP). Based on the BPMP, all non-toll public highway bridges with spans greater than 20 feet and toll bridges meeting the requirement of the National Highway System Designation Act of 1995 (23USC144(1)) were made eligible to receive Highway Bridge Program (HBP) funding for preventive maintenance activities. The purpose of the BPMP is to help local agencies extend the life of their bridges by performing certain activities that have been pre-approved by the Federal Highway Administration (FHWA) that correct minor deficiencies early in a bridge's life.

Staff responded by submitting a Bridge Preventative Maintenance Plan, which Caltrans accepted on November 1, 2007. The plan identified 10 bridges in the City that would benefit from preventative maintenance work. The proposed preventative maintenance work is based on inspection reports prepared by the Caltrans Structure Maintenance & Investigations office every two years.

Based on the priority of preventative maintenance repairs and the local funding available to meet the required federal match, staff selected four bridges to pursue funding for the first phase. On July 25, 2008, staff submitted four applications for funding of preventative maintenance for the Alvarado Bridge, the Auto Mall Bridge, the Isherwood Bridge, and the Old Canyon Bridge. In late 2009, Caltrans authorized the City's requested funds for all four bridges.

**DISCUSSION/ANALYSIS:** The bridge preventative maintenance work will involve some combination of (1) repairing deck spalls, (2) applying a high molecular weight methacrylate to the deck surface, and (3) replacing the seals at deck joints.

Deck spalls are small areas on the bridge deck surface where portions of the concrete have broken loose. The project will remove any unsound concrete in the area of a deck spall and fill the void with rapid setting concrete patches. The two bridges requiring this work are the Alvarado Bridge and the Isherwood Bridge.

Cracking in concrete bridge decks is widely regarded as a long-term durability and maintenance problem that requires attention. If left untreated, these cracks propagate through the deck, allowing rapid ingress of moisture and chloride ions into the concrete interior, leading to excessive deterioration due to rebar corrosion. The high molecular weight methacrylate is a sealant material commonly used on bridge decks to address the problem of deck cracking. The project will apply this sealant to the decks of all four bridges.

Deck joints in bridges are necessary to allow for expansion and contraction of the bridge caused by temperature changes. Since water can cause deterioration in concrete and steel elements of a bridge, joint seals are installed to prevent water intrusion into the joints. The project will replace the deteriorated joint seals at the Alvarado Bridge, the Isherwood Bridge, and the Old Canyon Bridge.

The BPMP grant will fund up to 88.53 percent of the project cost and requires an 11.47 percent local match. There are sufficient gas tax funds allocated to the project that will be used for the 11.47 percent local match. In order to initiate this project, staff recommends that the City Council authorize the City Manager or designee to accept the BPMP grant funds, and authorize staff to begin design on the Citywide Bridge Repair Project (PWC8120B).

Bridge	Estimated Project Costs	BPMP Funding (88.53%)	City Funding (11.47%)
Alvarado	\$193,314	\$171,140	\$22,174
Auto Mall	\$55,530	\$49,160	\$6,370
Isherwood	\$70,514	\$62,426	\$8,088
Old Canyon	\$45,335	\$40,136	\$5,199
Totals	\$364,693	\$322,862	\$41,831

**FISCAL IMPACT:** No impact on the General Fund. Acceptance of these funds will allow work to proceed that is otherwise unfunded.

**ENVIRONMENTAL REVIEW:** The proposed bridge maintenance activities are exempt from CEQA review pursuant to CEQA Guideline 15301 as the work will repair and maintain existing bridge facilities and involves no expansion of use. However, further appropriate environmental review will be conducted prior to completion of the design work for the project.

**ENCLOSURE:** None

**RECOMMENDATION:**

1. Authorize the City Manager or designee to accept the BPMP grant and to execute any associated grant documents.
2. Appropriate funds in the grant amount of \$322,862 to 522PWC8120 (Citywide Bridge Repair).
3. Direct staff to begin design of the Citywide Bridge Repair Project.

**\*2.6 APPROVAL TO INCREASE PURCHASE ORDER WITH ADAMSON POLICE PRODUCTS TO \$230,000**

**Request for Council Approval to Increase the Purchase Order with Adamson Police Products, a Division of Professional Police Supply, to \$230,000 in Fiscal Year 2009/10**

**Contact Person:**

Name:	Susan Aro	Craig T. Steckler
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**Executive Summary:** Items needed for Police Department field operations from Adamson Police Products will exceed \$100,000 this fiscal year. Staff is requesting Council authorization to purchase merchandise in a “not-to-exceed” amount of \$230,000. Funding is available in the current Police Department operating budget.

**BACKGROUND:** The cost for field equipment and supplies continues to increase. Purchases from the Adamson Company are projected to exceed \$100,000 this fiscal year. These purchases include field supplies such as ammunition, ballistic helmets, tactical uniforms for specialized units, firearms, K-9 cages for patrol cars, flashlights, SWAT assault vests, vehicle light bars, Tactical Emergency Medical Services (TEMS) uniforms and equipment, flex cuffs, reserve officer equipment, embroidery for volunteer shirts and specialized units, and ballistic vest covers. In addition, the indoor shooting range facility will soon be operational and will require a one-time increase in ammunitions inventory. Costs for this start-up inventory are estimated to be \$65,900. Approval is requested to authorize expenditures with the Adamson Company up to a total of \$230,000 in fiscal year 2009/10.

**DISCUSSION/ANALYSIS:** Acquiring ammunition is the largest single-item field expense in the Police Department. In recent times, ammunition costs have risen and availability has decreased because of U.S. military demand for ammunition related to the wars in Afghanistan and Iraq. The wait time for ammunition purchases now often exceeds six months after placing the initial order. Ammunition is required for mandatory shooting range training for sworn personnel. This training involves a variety of weapons that require different types of ammunition.

An added ammunition expense this year is stocking inventory in anticipation of the opening of the indoor shooting range next fiscal year. The indoor range will increase range training due to the proximity and availability of the facility. Range training will not be dependent on weather conditions, as it currently is with the use of the outdoor range at Coyote Hills. There will be savings in both time and overtime costs by use of the new indoor range for specific types of training, rather than the long drive out to and back from Coyote Hills.

Although the indoor range is a significant improvement for overall Department training needs, the outdoor range at Coyote Hills will also continue to be used. Last year, the Department converted to rifles in squad cars, replacing the older shotguns. The outdoor range will still be used for rifle training because it has the capacity to provide a 50-yard range training element that is not possible in the new

indoor range. The outdoor range also offers realistic handgun training programs involving the use of police vehicles and different types of barricades. The range training program will include both indoor and outdoor scenarios and range training will occur more frequently because shooting is a perishable skill and brings the highest level of liability for the City.

This request is being made in order to facilitate the early ordering of a sufficient amount of ammunition to provide training at both facilities, and the fact that the lag time between ordering and delivery can extend up to 6 months. While waiting for the new ammunition order to arrive, the Department will deplete the current stock of ammunition in training sessions scheduled over the next six months.

**Purchasing Process:** A sole source justification was approved by the City Manager in July 2008 for the purchase of Winchester firearms ammunition from Adamson Police Products, the only authorized distributor for Winchester ammunition in Northern California, Arizona, Colorado, Hawaii, Idaho, Montana, New Mexico, Utah and Wyoming. Although there is another Winchester-authorized ammunition dealer in Southern California, that company is not authorized to sell to law enforcement agencies outside Southern California. The Police Department has been using Winchester ammunition for over 15 years with positive results. Using other types of ammunition has resulted in weapon malfunctions, which raises officer safety concerns.

For the other items purchased from Adamson Police Products, staff periodically obtains price quotes from other vendors on items such as police dog cages, guns, ballistic helmets, light bars, and Special Weapons and Tactics Team (SWAT) assault vests in order to find the lowest cost. When Adamson Police Products quotes a price higher than another vendor, the order is placed with the other vendor.

**FISCAL IMPACT:** Funds are available in the Police Department's current operating budget. No additional appropriation is needed

**ENVIRONMENTAL REVIEW:** None

**ENCLOSURE:** None

**RECOMMENDATION:** Authorize purchase of merchandise from Adamson Police Products in an amount not to exceed \$230,000 in FY 2009/10, to be funded by the Police Department operating budget.

**\*2.7 APPROVAL OF PLANS AND SPECIFICATIONS, FUND APPROPRIATIONS, AND AWARD OF CONSTRUCTION CONTRACT TO SEISMIC RETROFIT AND RENOVATE FREMONT FIRE STATION NO. 3**

**Approval of Plans and Specifications, Fund Appropriations, and Award of Construction Contract to Seismic Retrofit and Renovate Fremont Fire Station No. 3 (City Project No. 8552B PWC) located in the Irvington District**

**Contact Person:**

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**Executive Summary:** The purpose of this report is to recommend that the City Council approve the plans and specifications for constructing the new Fremont Fire Station No. 3, appropriate \$2,440,641.81 in Fire Bond funds from Fund 213 to City Project No. 8552 PWC, and award a \$1,833,500.00 construction contract to River View Construction, Inc., for the construction of the new Fire Station No. 3 (City Project No. 8552B PWC).

**BACKGROUND:** In 2002, voters approved Measure R, the Fire Safety Bond, which called for the seismic retrofitting and renovation of seven existing fire stations, the construction of three new fire stations to replace existing deficient facilities, and the construction of new public safety training facilities. Fire Station No. 3 is the last of the seven existing fire stations to be seismically retrofitted.

**PROJECT DESCRIPTION:** This project involves the seismic retrofitting and substantial reconstruction of Fremont's Fire Station No. 3, an essential services facility, located at 40700 Chapel Way in Fremont's Irvington District. The reconstruction includes the reuse of portions of the original station's foundation and wood framing in conjunction with new construction to create a 5,370 square foot single-story building that is comprised of two apparatus bays, housing and support spaces. The exterior will be primarily painted cement plaster with aluminum windows and wood trim. The majority of the remaining site is concrete paved driveways, parking or walkways, landscaping and bio-retention planters. Other work includes utility work on and off site, a new generator, and minor right-of-way improvements.

**CONTRACT DURATION:** The contract documents stipulate that the work is to be performed and substantially completed in 365 calendar days. The contract also includes a provision for liquidated damages of \$1000 per calendar day for the contractor's failure to complete the work within the specified time. Staff recommends that the City Council approve these conditions.

**Discussion:** The bid documents for the reconstruction of Fire Station No. 3 were advertised on March 24, 2010 and March 31, 2010. Bids were opened on April 21, 2010, and 21 bids were received. The bid results range from \$1,833,500 to \$2,742,000. The engineer's estimate was \$2,030,022. The bidders with their respective bid amounts are shown below.

	<b>Bidder</b>	<b>Base Bid Amount</b>
1.	River View Construction, Inc.	\$1,833,500.00
2.	S&H Construction, Inc.	\$1,895,000.00
3.	Calstate Construction, Inc.	\$1,984,500.00
4.	Lyncon Construction, Inc.	\$1,987,798.00
5.	Pacific Mountain Contractors of California, Inc.	\$2,035,823.84
6.	D.L. Falk Construction, Inc.	\$2,039,000.00
7.	IMR Contractor Corp.	\$2,060,629.00
8.	Page Construction Company	\$2,065,960.00
9.	Aztec Consultants	\$2,115,020.00
10.	W.A. Thomas Co., Inc.	\$2,125,000.00
11.	Agbayani Construction Corporation	\$2,141,000.00
12.	Diede Construction, Inc.	\$2,148,942.00
13.	McCrary Construction Company	\$2,163,784.00
14.	San Jose Construction Co., Inc.	\$2,193,974.00
15.	Sausal Corporation	\$2,231,000.00
16.	G. Swanson Construction, Inc.	\$2,272,681.00
17.	Kuehne Construction	\$2,281,112.00
18.	Roek Construction, Inc.	\$2,296,825.00
19.	Applegate Johnston, Inc.	\$2,323,500.00
20.	BCI Builders, Inc.	\$1,915,000.00*
21.	Ionian Construction, Inc.	\$2,742,000.00*

\*Not Responsive (These bidders did not use the correct bid forms.)

#### **BID PROTEST**

A bid protest challenging the responsiveness of the bids of the apparent low bidder, River View Construction, and the second apparent low bidder, S&H Construction was received from the third apparent low bidder, Calstate Construction. Staff has determined that the argument set forth in the bid protest does not constitute cause for staff to recommend that council reject the bid of the apparent low bidder and therefore staff recommends award to River View Construction.

The third apparent low bidder, Calstate, argues that River View's bid should be rejected because River View only possess a "B" – General Building Contractor license and not an "A" - General Engineering Contractor license, which calls into question River View's ability to properly perform the project's required engineering work, i.e. site grading and paving.

Calstate's argument is without merit. State law licensing classifications define a general building contractor as a contractor whose principal business is in connection with a structure being built that requires the use of at least two unrelated building trades or crafts. The "B" General Building Contractor may "do or superintend" all or any part of the work in the building project. "B" - General Building Contractors, like River View, are specifically authorized to take prime contracts for projects containing work for which they do not hold the specialty license so long as the contract requires at least two unrelated building trades or crafts other than framing or carpentry. The only exception to this rule is for contracts involving certain fire protection and well drilling work where the general building contractor must hold the specialty license or subcontract with the appropriately licensed contractor. It should be noted that site grading and paving are typical elements of work in most building projects where the city

has used a contractor holding a “B” General Building Contractor license. River View is not required to hold an "A" - General Engineering Contractor license nor a specialty licenses for the project paving and grading work as suggested in Calstate's protest.

The second apparent low bidder, S&H Construction, Inc's bid was also the subject of Calstate's protest. Staff has not addressed this portion of Calstate's protest in this report as it has concluded that the protests to River View Construction, Inc., the low bidder, are not supported.

Staff recommends that Council accept city staff's evaluation of the bid protest and award the contract to River View Construction, Inc. as the lowest responsive and responsible bidder. River View's bid is in order and includes all required documentation. The firm is experienced in this type of work. The total contract amount will be \$1,833,500.00

#### **BUDGET:**

The project budget totals \$3,600,000. This budget includes soft costs, construction costs, site clean-up costs, and contingencies. The construction of the new station is funded by Measure R, the Fire Safety Bond.

#### **APPROPRIATIONS:**

Funds Appropriated to Date	\$1,159,358.19
Recommended Appropriations (from Fund 213 to project PWC8549):	<u>\$2,440,641.81</u>
<b>Total Project Budget</b>	<b>\$3,600,000.00</b>

The recommended appropriations will come from interest income earned (net of any arbitrage rebate due the federal government) on the original bond proceeds during the construction period, of \$2,440,641.81.

**ENVIRONMENTAL IMPACT:** This project is categorically exempt from CEQA per section 15301, existing facilities.

**DESIGN CONSULTANT:** Noll and Tam Architects and Planners.

**SPENDING LIMIT IMPACT (ARTICLE XIII B):** None.

#### **ENCLOSURES:**

- [Fire Station No. 3 site and floor plans with building elevations from the construction documents](#)
- [Bid protest letter from Calstate Construction, Inc.](#)
- [Response letter from River View Construction, Inc.](#)

#### **RECOMMENDATION:**

1. Find that this project is categorically exempt from CEQA per section 15301, existing facilities.
2. Approve Plans and Specifications for the new Fire Station No. 3,
3. Appropriate \$2,440,641.81 in Fire Bond proceeds from Fund 213 to PWC8552, and
4. Award a contract for the reconstruction of the new Fire Station No. 3 (City Project No. 8552B PWC) to River View Construction, Inc., in the amount of \$1,833,500.00; and authorize the City Manager, or designee, to execute the contract.

## **6.1 Report Out from Closed Session of Any Final Action**

## 7.1 INTRODUCTION OF AN ORDINANCE PROHIBITING THE USE OF POLYSTYRENE FOAM DISPOSABLE FOOD PACKAGING

**Consideration to Waive Full Reading and Introduce an Ordinance to Amend the Fremont Municipal Code (FMC) to add Title IV, Chapter 2, Article 10 to the FMC to Prohibit the Use of Expanded Polystyrene Disposable Food Service Ware by Food Vendors within City Limits**

### **Contact Person:**

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**Executive Summary:** On December 15, 2009 the City Council directed City staff to develop an ordinance prohibiting the use of expanded polystyrene disposable food service ware. In response, staff has prepared the attached ordinance for City Council consideration. The proposed ordinance would add a new Article 10 to Title IV, Chapter 2, Solid Waste, Recyclables, and Waste Management; which would prohibit the use of expanded polystyrene disposable food service ware (commonly referred to as “Styrofoam”) by food vendors within the City. Food vendors are defined as businesses that provide prepared food or beverages (e.g., store, supermarket, delicatessen, restaurant, retail food vendor, sales outlet, shop, cafeteria, catering truck or vehicle, caterer, sidewalk or outdoor vendor). Instead of using expanded polystyrene disposable food service ware, businesses would be required to use recyclable or compostable food service ware. This ordinance would apply to users of City facilities as well. Staff is recommending the ordinance become effective on January 1, 2011, in order to allow affected businesses time to use existing product inventories.

**BACKGROUND:** Expanded polystyrene (EPS), also known by the name “Styrofoam” or polystyrene foam, is formed by adding a blowing agent to polystyrene, a petroleum-based plastic material. Polystyrene foam is light-weight (about 95% air), with good insulation properties and is used in all types of products from cups that keep beverages hot or cold to materials that keep items safe during shipping. The California Integrated Waste Management Board (CIWMB) estimated that Californians use 165,000 tons of expanded polystyrene each year for packaging and food service purposes alone.

Unfortunately, EPS is very difficult to recycle and has a number of environmental drawbacks. Food service EPS causes unique litter management issues, especially due to its lightweight nature; it floats in water and/or is easily blown by the wind from place to place even when disposed of properly. EPS can enter creeks or stormwater drains, through both direct and indirect means and is routinely observed during street sweeping activities and local creek clean up events. It is estimated that polystyrene foam comprises 15% of the litter collected from Fremont’s storm drains, based upon a 2008 litter characterization study. Food service polystyrene foam also breaks into smaller units over time but does not biodegrade in the environment. This not only causes blight but can negatively impact marine and terrestrial wildlife. A CIWMB Report found that “in the categories of energy consumption, greenhouse gas effect, and total environmental effect, polystyrene’s environmental impacts were second highest, behind aluminum.” For these reasons, nearly 100 cities nationwide, including 35 California cities

(Millbrae, Mill Valley, Pacific Grove, Oakland, Emeryville, Richmond, and Alameda locally), have banned polystyrene foam food service ware.

Changing from expanded polystyrene containers to recyclable or compostable food service ware would provide an opportunity to recycle or compost an additional 258,000 pounds of waste annually helping Fremont meet its 75% diversion goal.

Staff has been collaborating with the Fremont Chamber of Commerce to obtain feedback from the business community. Prior to developing this ordinance, staff from the City and Chamber of Commerce conducted face-to-face meetings and made phone contacts with numerous businesses to get their input on the proposed ban. The City also sent email surveys translated into Chinese and Spanish to approximately 400 restaurants. Unfortunately, total responses to the survey were very low, with less than 40 surveys returned. City staff also met with the Chamber of Commerce's Government Affairs Committee to review key elements of the proposed ordinance and as well as planned outreach efforts to impacted businesses.

**DISCUSSION:** In developing this ordinance, staff evaluated approximately 30 existing ordinances in California and conducted follow-up with jurisdictions that had already implemented an expanded polystyrene ordinance. The proposed ordinance for the City of Fremont considers the feedback staff received from those jurisdictions and contains the components that staff believes are most relevant and productive for achieving the City's goals while considering the interests of the City's business community and citizens.

Staff is recommending the ordinance apply to any establishment located within the City of Fremont that provides prepared food or beverages including: supermarkets, delicatessens, restaurants, sales outlets, shops, outdoor vendors, cafeterias, catering trucks, caterers, special events promoters and retail food vendors. The ordinance also applies to the City of Fremont and its facilities, including permit holders.

The proposed ordinance would require the use of compostable or recyclable take out food service ware, rather than expanded polystyrene, for any food or beverage prepared for consumption within the City using any cooking, packaging, or preparation techniques by the food vendor. This requirement would not apply to uncooked meat, fish, poultry, or eggs unless provided for consumption without further preparation (e.g., sushi). The definition of food service ware includes lids, plates, cups, bowls, trays, and hinged and lidded containers. Items often associated with take out food service but not restricted by the ordinance include single-use straws, coffee stirrs, utensils or hot cup lids since these items are not made of expanded polystyrene.

Alternative products to EPS are readily available and used widely in other cities with expanded polystyrene bans. These recyclable or compostable alternative materials include: paper based packaging, biodegradable plant-based packaging, recyclable plastic packaging, and aluminum packaging. For the purposes of this ordinance, compostable means all the materials in the product or package will break down into, or otherwise become part of usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner, in an appropriate composting program or facility, or in a home compost pile or device.

Rigid plastic containers are also currently available in many shapes, sizes and styles for use instead of expanded polystyrene. Fremont's recycling programs accept a wide range of plastics, which are recycled and processed into new products. Aluminum packaging is also an acceptable alternative as this material has well established recycling markets.

In general, alternatives to EPS often cost a few cents more per container but vary in price depending upon product type, weight and durability. The actual cost to a food vendor to switch to an alternative product would be largely dependent on the amount and types of disposable food service ware in current use. Some local businesses have reported that cost neutral alternatives have been found to replace EPS packaging. Additionally, as demand for alternative products increase, the development of new products is driving innovation and additional product choices at lower cost. Many Fremont businesses have voluntarily stopped using polystyrene foam products and have incorporated acceptable alternatives because they are affordable, effective and desired by their customers.

Staff is developing an outreach and education plan that would assist Fremont food vendors in complying with the new ordinance and identifying appropriate alternative products. This includes efforts to inform retail and wholesale food packaging vendors so that they too will be aware which products will be acceptable under the new ordinance. An announcement letter and detailed brochure will be provided to each business expected to be impacted. Staff would also utilize newsletters, press releases, email notification, website tools and links, and interaction with business associations and community groups. Direct site visits and interaction with businesses would occur when possible to assist food vendors with product changes. Prior to the effective date of this ordinance, staff would remind food vendors to use their existing inventory of EPS products. Staff plans to continue to work with the Chamber of Commerce specifically on this issue and seek additional outreach opportunities in the coming months.

Enforcement of this ordinance would be based on a complaint basis and through the existing annual inspections done by the Union Sanitary District. The City Manager or his designee would be authorized to enforce the ordinance and issue fines for uncorrected violations. Food vendors may be exempt for a period of time on a case by case basis for undue hardship. Undue hardship includes, but is not limited to situations unique to the food vendor not generally applicable to other persons in similar circumstances. The City Manager or his/her designee has the authority to determine if a violation of this chapter occurred and issue a written warning notice to the food vendor.

Following corrective outreach and direct contact with a business that is subject to the ordinance, food vendors which have subsequent violations would be subject to the following penalties:

1. A fine not exceeding one hundred dollars (\$100.00) for the first violation after the warning notice is given.
2. A fine not exceeding two hundred dollars (\$200.00) for the second violation after the warning notice is given.
3. A fine not exceeding five hundred dollars (\$500.00) for the third and any future violations after the warning notice is given.

Staff would work with food vendors to provide the necessary education to achieve compliance with the ordinance and fines would be used as the last resort for those establishments which continue to be in violation.

Staff is recommending that this ordinance become effective as of January 1, 2011. Prior to January 1, 2011 staff would notify and work with food vendors and others subject to the ordinance as described above.

The Environmental Services Advisory Commission reviewed this item at their April 27, 2010 meeting. The Commission voted unanimously in favor of supporting the proposed ordinance presented in this report.

**FISCAL IMPACT:** The ordinance is expected to be implemented with existing staff resources and Environmental Services Division budget. There will be no impact to the General Fund.

**ENVIRONMENTAL REVIEW:** An initial study was conducted and concluded that implementation of the proposed Fremont Municipal Code (FMC) amendment to ban use of expanded food service ware by food vendors within the City of Fremont is an implementing action aimed at achieving the City's 75% waste diversion goal by the end of the year 2010. No additional garbage trucks or processing facility construction will be required as a result of this action; therefore the proposed FMC amendment does not have the potential to have a significant effect on the environment. A draft negative declaration has been prepared.

**ENCLOSURES:**

- [Draft Ordinance](#)
- [Outreach Piece](#)
- [Draft Negative Declaration](#)

**RECOMMENDATION:**

1. Hold public hearing.
2. Find that the project is covered by a Negative Declaration under the California Environmental Review Act (CEQA) in that it does not have the potential to have a significant effect on the environment.
3. Waive full reading and introduce ordinance of the City of Fremont Amending the Fremont Municipal Code by Adding a New Article 10, Title 10, Title IV, Chapter 2 (Solid Waste, Recyclables, and Yard Waste Management) to Prohibit the Use of Expanded Polystyrene (foam) Disposable Food Service Ware and to Require the Use of Recyclable or Compostable Food Service Ware Within City Limits by the City Council of the City of Fremont.
4. Direct staff to prepare and the City Clerk to publish a summary of the ordinance.

## 8.1 Council Referrals

### 8.1.1 MAYOR WASSERMAN REFERRAL: Appointments to the East-West Connector Mitigation Monitoring Committee (MMC)

On March 9, 2010, the City Council approved the Formation Guidelines for the Mitigation Monitoring Committee (MMC) for the East West Connector Project. The Guidelines call for there to be six members of the committee, three residents each from Fremont and Union City appointed by the City Council of each respective city. Following an application period, Mayor Wasserman, recommends that the following individuals be appointed to the Committee:

<i>Advisory Body</i>	<i>Appointee</i>	<i>Term Expires</i>
Mitigation Monitoring Committee	Robert (Bob) Czerwinski	July 31, 2014
	Melodye Khattak	July 31, 2014
	Pat Mapelli	July 31, 2014

ENCLOSURES: [All applications on file.](#)

## 8.2 Oral Reports on Meetings and Events



## ACRONYMS

ABAG.....	Association of Bay Area Governments	FUSD .....	Fremont Unified School District
ACCMA.....	Alameda County Congestion Management Agency	GIS .....	Geographic Information System
ACE .....	Altamont Commuter Express	GPA.....	General Plan Amendment
ACFCD .....	Alameda County Flood Control District	HARB .....	Historical Architectural Review Board
ACTA .....	Alameda County Transportation Authority	HBA .....	Home Builders Association
ACTIA .....	Alameda County Transportation Improvement Authority	HRC .....	Human Relations Commission
ACWD .....	Alameda County Water District	ICMA .....	International City/County Management Association
BAAQMD .....	Bay Area Air Quality Management District	JPA .....	Joint Powers Authority
BART .....	Bay Area Rapid Transit District	LLMD .....	Lighting and Landscaping Maintenance District
BCDC .....	Bay Conservation & Development Commission	LOCC.....	League of California Cities
BMPs .....	Best Management Practices	LOS .....	Level of Service
BMR .....	Below Market Rate	MOU .....	Memorandum of Understanding
CALPERS.....	California Public Employees' Retirement System	MTC.....	Metropolitan Transportation Commission
CBD .....	Central Business District	NEPA .....	National Environmental Policy Act
CDD.....	Community Development Department	NLC.....	National League of Cities
CC & R's .....	Covenants, Conditions & Restrictions	NPDES.....	National Pollutant Discharge Elimination System
CDBG .....	Community Development Block Grant	NPO.....	Neighborhood Preservation Ordinance
CEQA .....	California Environmental Quality Act	PC.....	Planning Commission
CERT .....	Community Emergency Response Team	PD .....	Planned District
CIP .....	Capital Improvement Program	PUC.....	Public Utilities Commission
CMA .....	Congestion Management Agency	PVAW .....	Private Vehicle Accessway
CNG.....	Compressed Natural Gas	PWC.....	Public Works Contract
COF .....	City of Fremont	RDA .....	Redevelopment Agency
COPPS .....	Community Oriented Policing and Public Safety	RFP .....	Request for Proposals
CSAC.....	California State Association of Counties	RFQ.....	Request for Qualifications
CTC .....	California Transportation Commission	RHNA .....	Regional Housing Needs Allocation
dB .....	Decibel	ROP.....	Regional Occupational Program
DEIR.....	Draft Environmental Impact Report	RRIDRO.....	Residential Rent Increase Dispute Resolution Ordinance
DO .....	Development Organization	RWQCB .....	Regional Water Quality Control Board
DU/AC.....	Dwelling Units per Acre	SACNET .....	Southern Alameda County Narcotics Enforcement Task Force
EBRPD .....	East Bay Regional Park District	SPAA .....	Site Plan and Architectural Approval
EDAC .....	Economic Development Advisory Commission (City)	STIP .....	State Transportation Improvement Program
EIR.....	Environmental Impact Report (CEQA)	TCRDF.....	Tri-Cities Recycling and Disposal Facility
EIS .....	Environmental Impact Statement (NEPA)	T&O .....	Transportation and Operations Department
ERAF.....	Education Revenue Augmentation Fund	TOD .....	Transit Oriented Development
EVAW .....	Emergency Vehicle Accessway	TS/MRF .....	Transfer Station/Materials Recovery Facility
FAR .....	Floor Area Ratio	UBC .....	Uniform Building Code
FEMA.....	Federal Emergency Management Agency	USD.....	Union Sanitary District
FFD.....	Fremont Fire Department	VTa .....	Santa Clara Valley Transportation Authority
FMC.....	Fremont Municipal Code	WMA .....	Waste Management Authority
FPD.....	Fremont Police Department	ZTA.....	Zoning Text Amendment
FRC.....	Family Resource Center		

**UPCOMING MEETING AND CHANNEL 27  
BROADCAST SCHEDULE**

<b><i>Date</i></b>	<b><i>Time</i></b>	<b><i>Meeting Type</i></b>	<b><i>Location</i></b>	<b><i>Cable Channel 27</i></b>
May 18, 2010	6:00 p.m.	Work Session	Council Chambers	Live
May 25, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
June 1, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
June 8, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
June 15, 2010	TBD	Work Session	Council Chambers	Live
June 22, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
June 29, 2010 (5 <sup>th</sup> Tuesday)	TBD	No City Council Meeting		
July 6, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
July 13, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
July 20, 2010	TBD	Work Session	Council Chambers	Live
July 27, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
		August Recess		
September 7, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
September 14, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
September 21, 2010	TBD	Work Session	Council Chambers	Live
September 28, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live